

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT ROWEN, et al.,

No. C 12-5831 RS

Petitioners,

v.

ORDER RE PENDING MOTIONS

DOUGLAS H. SHULMAN, et al.,

Defendants.

This action, which *pro se* litigants Robert Rowen and Teresa Su styled as “petition for writ of mandamus,” was previously dismissed with leave to amend. Rowen and Su were advised that while they were not barred from continuing to pursue their claims under the rubric of a mandamus petition, they should give careful consideration to whether the relief they seek might be more appropriately presented in an ordinary civil action against the government. In response, Rowen and Su filed a document entitled both as a motion for reconsideration, and as an amended mandamus petition.

The government then filed an opposition to the request for reconsideration, which prompted a motion from Rowen and Su for additional time to reply. Rowen and Su subsequently have filed two “emergency petitions,” one of which the government has moved to strike, and the other of which the government has opposed.

1 The motion for reconsideration is denied. The pleading in which Rowen and Su requested
2 reconsideration, however, (Dkt. No. 43) shall be deemed to be their amended and now-operative
3 pleading, as allowed by the prior dismissal order. The government shall promptly answer or move
4 to dismiss that amended pleading. Any motion to dismiss should not focus solely on whether
5 mandamus relief is appropriate, but shall also address whether the pleading, liberally construed,
6 otherwise states a civil claim.

7 While Rowen and Su's two "emergency petitions" are not entirely clear, the first appears to
8 seek relief on matters tangential to their primary claim, and the second seems to request relief in the
9 nature of a default ruling in their favor, based on an incorrect presumption that they have presented a
10 cognizable petition that remains unopposed. Neither emergency petition establishes a right to
11 immediate relief, and both are denied.

12 This order disposes of Docket Nos. 46, 48, 51, 55, and of the aspect of Docket No. 43 that
13 was a motion for reconsideration. Docket No. 43 remains, however, as the operative pleading.
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17 IT IS SO ORDERED.

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19 Dated: 8/30/13

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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE